IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 9664 of 2004

Between:

1. Ahmad Mohiuddin S/o Ghouse Mohduddin, R/o Manzoor Nagar H/o Kompally, Bhupalpally Mandal, Warangal District.
2. Afzal Mohiddin S/o Mohd. Manzoor Ali, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District.
3. Sarvar Mohiuddin S/o Mohd. Menzoor Ali, R/o Manzoor Nagar H/o Kompally, Bhupalpally Mandal, Warangal District.
4. Alladi Veera Rao S/o Narsing Rao, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District.
5. Gundeboina Mondaiah S/o Ilaiah, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District.
6. Mudike Rajaiah S/o Rajamallu, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District
7. Mudike Raja Mallu S/o Bachaiah, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District.
8. Puttapaka Rajeiah S/o Mallesham, R/o Manzoor Nagar, H/o Kompally, Bhupalpally Mandal, Warangal District.
9. Afzal Sulthana W/o Sayed Farhathullah, R/o Manzoor Nagar H/o Kompally, Bhupalpally Mandal, Warangal District

..... PETITIONERS

AND

1 The Land Acquisition Officer, and Sub Collector, Mulugu, Warangal District
2 The District Collector, Warangal
3 The Projector Officer, SCCL. Bhoopalpally Warangal District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in not issuing 12 (2) notice and not paying the compensation or depositing the same into court as per section 31 of the L.A. Act

after award under 11(1) of L.A. Act as made has totally illegal, and without jurisdiction by further declaring the proposed action of the 1st respondent to revise the award by conducting fresh enquiry under Section 11(1) after issuing 9(1) notices vide file No B/ASC/300/2000 dt 25-5-2003 as totally illegal, and without Jurisdiction and consequently direct the respondents to pay the compensation as per the Award made by the Respondent vide proceedings Award No. B/SC/300/2000 dt 6-11-2003.

Counsel for the Petitioners: MR.S.LAKSHMA REDDY

Counsel for the Respondent Nos.1 & 2: GP FOR LAND ACQUISITION

Counsel for the Respondent No.3: Mr. RAMESH RANGANATHAN

The Court made the following:

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ORDER:

The undisputed facts in this case are, at the instance of The Singareni Collieries Company Limited (hereinafter referred to as the Company) a notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act), proposing to acquire Ac.77.06gts of land at Manzoornagar village H/o Kompalli, Bhupalpally Mandal, Warangal District, belonging to the petitioners, was made and declaration under Section 6 of the Act was published on 24.10.2002, invoking the urgency clause under Section 17 of the Act, to enable the Company constructing the office for its General Manager, and residential quarters of its employees. Advance possession of the land proposed to be acquired was taken on 11.12.2002, and notices under Section 9 of the Act were issued to the petitioners, who submitted a representation through their counsel on 27.12.2002, claiming compensation at Rs.200/- per Sq. Yard for the lands adjoining the roadside, and Rs.2 lakhs per acre for other lands. The Land Acquisition Officer, tentatively approved Rs.98,000/- to Category-I lands and Rs.90,000/- to Category-II lands, and asked the petitioners to appear before him for negotiation for passing a consent award. Since negotiations failed, notice in Form-I, under Rule 5 of the Land Acquisition Rules (the Rules), was issued to the

petitioners to appear before the negotiations committee consisting of the second respondent, Joint Collector and the third respondent. But, those negotiations also failed. Third respondent representing the company requested the first respondent to pass an award as per Section 11(1) of the Act. First respondent after preparing an award on 06.11.2003 fixing the price at Rs.98,000/- for the Category-I lands and Rs.90,000/- for Category-II lands, sent the same for approval of the second respondent, being the person authorized by the State Government to approve the award under Section 11(1)(iii) of the Act. Second respondent having initialled the award sent by the first respondent, in token of his approval, kept the file with him. In the meanwhile, third respondent representing the Company addressed a letter to first respondent to fix the value of the acquired lands at Rs.40/- per Sq. Yard. Coming to know that first respondent, without pronouncing the award, had prepared notice dated 25.05.2004 asking them to appear before him on 10.06.2004, petitioners filed this petition for a declaration that first respondent not issuing notice under Section 12(2) of the Act to them, after passing the award, and not paying compensation to them as per the said award is illegal and arbitrary and for a consequential direction to the respondents to pay compensation as per the award prepared by the first respondent on 06-11-2003.

2. The main contention of Sri N. Subba Reddy, learned Senior counsel for the petitioners, is that since first respondent invoked the urgency clause and took advance possession of the lands of the petitioners, he ought to have paid 80% of the estimated value of the lands as per Section 17(3A) of the Act and since no such payment was made and since a reading of para-8 of the judgment in **UNION OF INDIA v. KRISHAN LAL ARNEJA** at page 464, shows that the decision of Delhi High Court quashing a notification for non-compliance with Section 17(3A) of the Act, by not tendering 80% of compensation, was upheld by the Supreme Court, it is clear that compliance with Section 17(3A) of the Act is mandatory and yet petitioners without seeking the relief of quashing the notification, are seeking a direction for payment of the compensation as mentioned in the award made by the first respondent, and approved by the second respondent, because first respondent without making payment of the amount as per the award prepared by him is trying to reopen a closed issue in an arbitrary and illegal manner violating Art.14 and 300-A of the Constitution of India. Sri Ramesh Ranganathan, learned counsel for the third

respondent, relying on **Dodla Mallaiah v. State of A.P.** and **S.L.A. Officer v. Natverlal Jamnedas**, **N.Boman Behram v. State of Mysore**, **Kooverbai Sorabji Manikji v. Assistant Collector, Surat**, **Padmsi Narain v. Collector of Thana**, **Baru Mal v. State of U.P., Patri Srinivasa Rao vs. State of A.P., V.Samrajyalakshmi v. District Collector** and **V.E.T.Pharmaceuticals v. Govt. of A.P.** contended that the Land Acquisition Officer while determining the compensation, payable to the persons interested in the land acquired, through an award, does not act either as a judicial or quasi judicial authority, but only acts as an administrative officer and since award passed by the 1st respondent attains finality only when it is sent back to him after the 2nd respondent, as the officer authorized by the State Government under the first proviso to Section 11(1)(iii) of the Act, approves it, and in any event since award is but an offer, and has to be communicated to the interested party for him to respond, and since an offer can always be withdrawn or changed or modified before it is communicated to the offeree, and since an administrative act can always be reviewed, and since in para-36 of **KRISHAN LAL ARNEJA** case (1 supra) relied on by the learned counsel for the petitioners, the apex Court left open the issue whether non-compliance with Section 17(3A) of the Act vitiates the entire acquisition proceedings, and since a Division Bench of this Court in **Managing Director, APSRTC v. M. Kamala Kumari** held that failure to tender 80% of estimated compensation before taking over possession does not vitiate the land acquisition proceedings, and since in fact 3rd respondent, in compliance with the direction of the first respondent, deposited a cheque for Rs.24,88,980/- towards 80% of the compensation payable to the persons interested in the land to be acquired, petitioners are not entitled to any relief in this case, more so because they have the remedy of judicial determination of the compensation payable to them by way of reference to Civil Court after the first respondent passes the award and communicates it to them.

3. In **N.BOMAN BEHRAM** case (4 supra) the apex Court held that the Land Acquisition Officer while making the award would not be acting in judicial or quasi-judicial capacity but acts only in an administrative capacity. So, it is clear that award making process is only an administrative act. In **R.R.VERMA v. UNION OF INDIA** the apex Court held that administrative decisions can always be reviewed, and so a Land Acquisition Officer can always review the decision relating to the

compensation to be awarded. Since the award be but an offer as held by the apex Court in **HARISH CHANDRA v. Dy. L.A. OFFICER** and since an offer is not complete till it is communicated to the offeree as held in **BARODA OIL CAKES TRADERS v. PARSHOTTAM NARAYANDAS BAGULIA**[14] and **BENGAL INSURANCE AND REAL PROPERTY CO. v. VELAYAMMAL**[15], and since it is not the case of the petitioners that they have received a copy of the award from 1st respondent, and since 1st respondent did not admittedly announce or communicate the award passed by him to the petitioners, petitioners cannot invoke the jurisdiction of this Court to direct the first respondent to act on the award, which is yet to become final, and which he can always review. Even if the first respondent reviews the award prepared by him earlier, and passes a fresh award after the same is approved by the second respondent (as person authorized by the Government), petitioners remedy to seek a reference to Civil Court for determination of the compensation payable to him would not be lost. So, petitioners cannot be said to be aggrieved even if the 1st respondent were to review his earlier decision and pass a fresh award, for lesser amount.

4. As stated earlier, petitioners are not seeking the relief of quashing the proceedings, but are insisting on deposit of the 80% of the amount mentioned in the award, which is not communicated to them. In **KRISHAN LAL ARNEJA** case (1 supra), relied on by the both sides, the apex Court did not decide the question relating to validity of the proceedings for acquisition, when Section 17(3A) of the Act is not complied with, because in para-36 it observed as follows:

> "Since we are of the view that the decisions in Banwari Lal and Shakuntala Gupta cover these appeals against the appellants, we do not consider it necessary to deal with the contention that due to non- compliance of sub-section (3A) of section 17 of the Act, the entire acquisition proceedings were vitiated. Further when we are upholding the impugned common order on other grounds, we do not wish to deal with this contention."

Since the land was already taken possession of, it stood vested in the Government by virtue of Section 17(1) of the Act. In **KAMALA KUMARI** case (11 supra) a Division Bench of this Court held that failure to tender 80% of the estimated compensation before taking over possession would not vitiate the land acquisition

proceedings. In fact a three Judge Bench of the apex Court in **SATENDRA PRASAD JAIN v. STATE OF U.P.** held that failure to pay 80% of the estimated compensation before taking advance possession under Section 17(3A) of the Act would not amount to taking possession illegally, and failure to pass an award within two years as mandated by Section 11-A of the Act would not divest the title of the Government.

5. Since petitioners have no right to enforce an offer, which is not even communicated to them, their prayer for a direction to respondents to deposit 80% of the compensation in the draft award prepared by 1st respondent cannot be granted.

6. Since 3rd respondent admittedly deposited the amount of Rs.22,88,980/- with the first respondent and since advance possession is taken, first respondent can be directed to disburse that amount to the petitioners.

7. Therefore, the writ petition is disposed of with a direction to the first respondent to disburse Rs.22,88,980/- deposited by the 3rd respondent as per Section 17(3A) of the Act and complete the process of passing an award as expeditiously as possible, at any rate within a period of six months from the date of receipt of a copy of this order. No costs.

(C.Y.Somayajulu, J.)

Date: 17--03-2005

Cvrk

..... REGISTRAR

To

1. The Land Acquisition Officer, and Sub Collector, Mulugu, Warangal District.

2. The District Collector, Warangal.

3. The Projector Officer, SCCL. Bhoopalpally Warangal District.

4. 2 CCs to the Government Pleader for Land Acquisition, High Court Buildings, Hyderabad. (OUT)

5. 2 CD copies

6. 1 CC to MR.RAMESH RANGANADHAN

7. 1 CC to MR.LAKSHMA REDDY